

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 25

APPLICATION PROCEDURES RELATING TO FINANCIAL INSTITUTIONS

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-25-1 Objectives. The objective of this chapter is to implement the requirements of chapters 401, 402, 403, 404, 405, 405A, 406, 407, 408, and 410, Hawaii Revised Statutes, as they relate to applications, requests for opinions, and interpretations of law or rule, and consumer complaints. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 403-25, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§401-18, 403-7, 403-25, 406-6, 407-97, 408-33, 410-38)

§16-25-2 Definitions. As used in this chapter:

"Agreement corporation" means a United States domestic state-chartered corporation principally engaged in international banking. United States banks may invest in such corporations provided that the corporation enters into an agreement with the Federal Reserve Board to restrict its operations or conduct its business in such a manner or under such limitations and restrictions as the Federal Reserve Board may prescribe. In practice, the activities of agreement corporations have been restricted to those permitted Edge corporations.

"Application" means any written request for approval or action by the commissioner of financial institutions, including but not limited to: a petition, letter request, notice filing, or other submittal filed in the form prescribed by the commissioner and containing information required to determine whether a license, charter, certificate of authority, or any approval shall be granted.

"Commissioner" means the commissioner of financial institutions, the official responsible for licensing, examining, and supervising state-chartered financial institutions.

"DFI" or "division" means the division of financial institutions, department of commerce and consumer affairs.

"Edge corporation" means an organization chartered by the Federal Reserve Board to engage in international banking operations under section 25(a) of the Federal Reserve Act, 12 United States Code §§611-631. Edge corporations can engage in a broad range of international banking and financial activities, subject to supervision by the Federal Reserve Board, while limiting transactions within the United States to those clearly international in nature. Edge corporations assist in

the financing of international trade, and promote equity investments in foreign business.

"FDIC" means the Federal Deposit Insurance Corporation, which provides insurance on deposits to: commercial banks, savings banks, and industrial loan companies. The FDIC has primary federal supervisory authority over insured state banks that are not members of the Federal Reserve System.

"FFIEC" means the Federal Financial Institutions Examination Council, the interagency body which prescribes uniform principles, standards, and reporting forms for the federal examination and supervision of insured depository institutions, bank holding companies, and savings and loan holding companies. The council has five members: the comptroller of the currency, the chairman of the Federal Deposit Insurance Corporation, a member of the Board of Governors of the Federal Reserve System, the chairman of the Federal Home Loan Bank Board, and the chairman of the National Credit Union Administration.

"FHLBB" means the Federal Home Loan Bank Board, the federal regulatory agency for savings and loan associations and savings banks. Through the Federal Savings and Loan Insurance Corporation (FSLIC), it provides deposit insurance to federal savings and loan associations and savings banks, and to many state-chartered institutions, including all Hawaii-chartered savings and loan associations.

"Financial institution" means state-chartered financial institutions including: banks, foreign bank representative offices or agencies, trust companies, savings and loan associations, industrial loan companies, and credit unions.

"NCUA" means the National Credit Union Administration, the federal agency that charters, insures, and supervises federal credit unions. Through the National Credit Union Share Insurance Fund, the NCUA provides deposit insurance to federal credit unions and to many state-chartered credit unions, including all Hawaii-chartered credit unions.

"UFIRS" means the "Uniform Financial Institutions Rating System", which was issued and recommended by the Federal Financial Institutions Examination Council on November 31, 1979, and adopted by the division pursuant to section 16-26-7. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 403-25, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§401-18, 403-7, 403-14, 405-34, 407-97, 408-33, 410-38)

SUBCHAPTER 2

APPLICATION PROCEDURES

§16-25-7 General procedures. Any person desiring to obtain the approval of the commissioner shall:

- (1) File an application in the form prescribed by this chapter;
- (2) File the appropriate application fee, if any; and
- (3) Provide public notice of the filing of the application, as prescribed by this chapter. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-16, 403-23, 403-24, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-46, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-11, 404-12, 405-2, 405-3, 405-4, 405-5, 405-6, 405-7, 405-8, 405-9, 405A-2, 406-1.5, 406-14, 407-11, 407-12, 407-13, 407-14, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-10, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-8 Application forms; fees. (a) Each application referred to in this chapter shall be made by the completion and submittal to the commissioner, in duplicate, of:

- (1) The application form prescribed by the commissioner, copies of which may be obtained by request from the division; or
- (2) The application in letter form, if no application form has been prescribed by the commissioner. The application in letter form shall state in detail the nature and scope of the requested consent or approval and all information reasonably required for the commissioner's review and consideration of the application.

(b) If in respect of the subject matter of an application the applicant is required to submit an application to the FDIC, FHLBB, or NCUA on a prescribed form, the application filed with the commissioner may constitute a copy of the application form filed or to be filed with the respective federal agency. The commissioner may require in respect of this type of application the submittal of information not specifically prescribed by the federal application form, but required by state law.

(c) An application fee shall be paid by check made payable to the "Department of Commerce and Consumer Affairs, State of Hawaii", concurrently

with the filing of the application. The fee shall be nonrefundable. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-16, 403-23, 403-24, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-46, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-11, 404-12, 405-2, 405-3, 405-4, 405-5, 405-6, 405-7, 405-8, 405-9, 405A-2, 406-1.5, 406-14, 407-11, 407-12, 407-13, 407-14, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-10, 408-11.1, 408-14, 410-7, 410-8, 410-9, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-9 Sufficiency of application. An application filed with the commissioner shall not be deemed complete, unless it includes all of the information required on the prescribed form and any additional relevant information as the commissioner may require by written request to the applicant. The failure of an applicant to respond within ten business days of the date of the written request for additional information may be treated as grounds for denial of an application. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-16, 403-23, 403-24, 403-28, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 405-2, 405-4, 405-6, 405-8, 405-9, 405A-2, 406-1.5, 406-14, 407-11, 407-12, 407-14, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-95, 407-103, 407-104, 407-61.4, 407-61.5, 408-8, 408-10, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-10 Bank applications. Unless otherwise provided, this chapter applies to the applications listed below. Forms to be executed in connection with an application and the application fees, if any, are designated.

- (1) Application for investment banker (letter application, \$150 fee);
- (2) Application to organize a bank (FDIC Form 6200/05A, \$1,000 fee);
- (3) Application for a bank's articles of incorporation (FDIC Form 6200/05A);
- (4) Application for a solicitation permit (FDIC Form 6200/05A);
- (5) Application for a charter to do banking business (FDIC Form 6200/05A);
- (6) Application of a foreign bank to establish an agency or representative office (DFI Form 403/1A or DFI Form 403/1B, \$5,000 fee to establish an agency for a foreign bank not licensed

- to transact business in the State, \$1,500 fee to establish an agency for a foreign bank licensed to transact business in the State, or \$1,500 fee to establish a representative office; \$100 fee for issuance of license);
- (7) Application for a bank to engage in a trust business (letter application; \$500 fee);
 - (8) Application to increase or decrease par value of capital stock (letter application, \$150 fee);
 - (9) Application for change in control of bank or bank holding company (FDIC Form 6822/01 or Federal Reserve Board Form 2081);
 - (10) Application to increase or decrease capital stock (letter application, \$150 fee);
 - (11) Application to issue preferred stock (letter application, \$150 fee);
 - (12) Application to sell all of a bank's business or any of its departments or branches (letter application, \$250 fee);
 - (13) Application to change the location of a bank's main office (letter application, \$150 fee);
 - (14) Application to obtain and exercise powers authorized to a national bank (letter application);
 - (15) Application to open an in-state branch bank (letter application, \$500 fee);
 - (16) Application to change the location of an in-state branch (letter application, \$150 fee);
 - (17) Application to open an out-of-state branch bank (letter application, \$100 fee);
 - (18) Application for designation of depository (letter application);
 - (19) Application for approval to hold real estate longer than five years (letter application);
 - (20) Application of a foreign bank to relocate or to close an agency (letter application, \$250 fee); and
 - (21) Application of a foreign bank to relocate or to close a representative office (letter application, \$250 fee). [Eff 8/13/87] (Auth: HRS §§26-9, 401-18, 403-7, 403-14, 403-25, SLH 1987, Act 168) (Imp: HRS §§403-12, 403-13, 403-16, 403-21, 403-22, 403-23, 403-24, 403-25, 403-26, 403-27, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-46, 403-47.1, 403-53, 403-54, 403-55, 403-71, 403-74, 403-97, SLH 1987, Act 168)

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§16-25-11 Bank merger applications. Unless otherwise provided, this chapter applies to the applications listed below. Forms to be executed in connection with an application and the application fees, if any, are designated.

- (1) Application of a state bank to merge with and into a national bank (FDIC 6220/01 or 6220/07);
- (2) Application of a state bank to merge with and into another state bank (FDIC 6220/01 or 6220/07, \$500 fee); and
- (3) Application of a national bank to convert into a state bank (FDIC 6220/01 or 6220/07, \$500 fee). [Eff 8/13/87] (Auth: HRS §401-18) (Imp: HRS §§26-9, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 404-10, 404-11, 404-12)

§16-25-12 International and foreign banking corporation applications. Unless otherwise provided, this chapter applies to the applications listed below. Forms to be executed in connection with an application and the application fees, if any, are designated.

- (1) Application to organize an Agreement corporation for the purpose of engaging in international or foreign banking or other international or foreign financial operations (letter application, \$150 fee);
- (2) Application of Agreement corporation to invest in any one corporation (except a corporation engaged in the business of banking) in an amount in excess of ten per cent of its own capital and surplus (letter application); and
- (3) Application for designation of depository (letter application). [Eff 8/13/87] (Auth: HRS §26-9, 401-18, 403-7, 405-34) (Imp: HRS §§403-23, 405-2, 405-3, 405-4, 405-5, 405-6, 405-7, 405-8, 405-9, 405-20)

§16-25-13 International banking facility applications. Unless otherwise provided, this chapter applies to a letter application providing the statement of intention to establish an international banking facility. [Eff 8/13/87] (Auth: HRS §401-18) (Imp: HRS §405A-2)

§16-25-14 Trust company applications. Unless otherwise provided, this chapter applies to the applications listed below. Forms to be executed in connection with an application and the application fees, if any, are designated.

- (1) Application to do a trust business (DFI Form 406/1, \$1,000 fee);

- (2) Application to increase or decrease capital stock (letter application, \$150 fee);
- (3) Application to issue or retire preferred stock (letter application, \$150 fee); and
- (4) Application to merge trust companies (letter application, \$500 fee). [Eff 8/13/87] (Auth: HRS §§26-9, 401-18, 406-6) (Imp: HRS §§406-1.5, 406-2, 406-3, 406-11, 406-12, 406-14)

§16-25-15 Savings and loan association applications. Unless otherwise provided, this chapter applies to the applications listed below. Forms to be executed in connection with an application and the application fees, if any, are designated.

- (1) Application to organize a savings and loan association (FHLBB Form 140-A, \$1,000 fee);
- (2) Application for licensure of agent to solicit the sale of stock, savings certificates or investment certificates of savings and loan association (letter application, \$250 fee);
- (3) Application to establish branch office or agency (FHLBB Form 700, \$500 fee);
- (4) Application to change the location of a savings and loan association's main office or branch (letter application, \$150 fee);
- (5) Application to convert from a state savings and loan association into a federal savings and loan association (FHLBB Form 710);
- (6) Application to convert from a federal savings and loan association into a state savings and loan association (FHLBB Form 710, \$500 fee);
- (7) Application to exercise all rights, privileges, benefits and immunities possessed by federal savings and loan associations (letter application);
- (8) Application for the transfer of a part or all of the assets from one savings and loan association to another savings and loan association (FHLBB Form 1314, \$250 fee);
- (9) Application for approval to form a service corporation or invest in the capital stock obligations or other securities of a service corporation (letter application, \$150 fee);
- (10) Application for reorganization of a savings and loan association (FHLBB Form 710, \$150 fee);
- (11) Application for consolidation or merger of savings and loan associations (FHLBB Form 710, \$500 fee); and

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- (12) Application for approval of proposed acquisition of control of a savings and loan association (letter application, \$500 fee). [Eff 8/13/87] (Auth: HRS §§26-9, 401-18, 407-97) (Imp: HRS §§407-11, 407-12, 407-13, 407-14, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-49, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104)

§16-25-16 Industrial loan company applications. Unless otherwise provided, this chapter applies to the applications listed below. Forms to be executed in connection with an application and the application fees are also designated.

- (1) Application to engage in the industrial loan business (DFI Form 408/1, \$1,000 fee);
- (2) Application to relocate an office of an industrial loan company (letter application, \$50 fee);
- (3) Application to transfer or assign the license of an industrial loan company (DFI Form 408/6 or FDIC Notice of Change in Bank Control, \$1,000 fee);
- (4) Application to transfer the voting stock of an industrial loan company (DFI Form 408/6, \$500 fee);
- (5) Application to establish a branch of an industrial loan company (letter application, \$500 fee); and
- (6) Application of industrial loan company to issue investment certificates or thrift accounts (FDIC Form 6200/05A, \$500 fee). [Eff 8/13/87] (Auth: HRS §§26-9, 401-18, 408-33) (Imp: HRS §§408-7, 408-8, 408-10, 408-11.1, 408-14, 408-26)

§16-25-17 Credit union applications. Unless otherwise provided, this chapter applies to the applications listed below. Forms to be executed in connection with an application and the application fees, if any, are designated.

- (1) Application to organize a credit union (NCUA Forms 4001, 4002, 4003, 4012, \$20 fee; organization certificate of credit union, \$5 fee);
- (2) Application to exercise all rights, privileges, benefits, and immunities possessed by a federally-chartered credit union (letter application);
- (3) Application to convert from a state-chartered credit union to a federally-chartered credit union, or application to convert from a

- federally-chartered credit union to a state-chartered credit union (letter application, \$20 fee);
- (4) Application to merge credit unions (NCUA Forms 4302, 4303, 4304, 4305, 4306, 4307, 4308, 4309A, 4309B, 4310, \$20 fee);
 - (5) Application for approval of change of name or place of business (letter application);
 - (6) Application to establish central credit union (NCUA Forms 4001, 4002, 4003, 4012, \$20 fee; organization certificate of credit union, \$5 fee);
 - (7) Application to establish corporate credit union (NCUA Forms 4001, 4002, 4003, 4012, \$20 fee; organization certificate of credit union, \$5 fee); and
 - (8) Application for approval to establish subsidiary offices of the credit union within the State (letter application, \$20 fee). [Eff 8/13/87] (Auth: HRS §§26-9, 401-18, 410-38) (Imp: HRS §§410-7, 410-8, 410-9, 410-10.5, 410-11, 410-32, 410-33, 410-34, 410-37, 410-37.5, 410-39)

§16-25-18 Emergency applications. Notwithstanding any provision contained in this chapter, an application may be approved by the commissioner without notice, comment, or hearing in any case which the commissioner determines to be an emergency arising from the insolvency of an existing institution or to prevent the failure of an existing institution. No such emergency applications may be granted unless the commissioner determines that the relevant statutory criteria have been met. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

SUBCHAPTER 3

NOTICE AND COMMENT PROCEDURES

§16-25-23 Scope. Except as otherwise provided by law, this subchapter applies to the following types of applications:

- (1) Application for proposed new financial institution;
- (2) Application by financial institution to establish branch;
- (3) Application by financial institution to relocate the main office or branch office;
- (4) Application by financial institution to merge or to consolidate with, acquire the assets of, or assume the liability to pay the deposits of another financial institution; and
- (5) Any other application which the commissioner deems appropriate. If an application falls within this category, the applicant will be notified at the time the application is accepted for filing that the procedures set forth in this subchapter shall be followed. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33) (Imp: HRS §§403-13, 403-16, 403-23, 403-24, 403-28, 403-30, 403-32, 403-33, 403-37, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-5, 404-6, 404-7, 405-2, 405-4, 405-6, 405-8, 405-9, 405A-2, 406-1.5, 406-14, 407-11, 407-12, 407-14, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-10, 408-11.1, 408-14)

§16-25-24 Notice by publication of application; opportunity to comment and provide information. (a) Upon the filing of an application, the applicant shall publish notice of the proposed transaction in a newspaper of general circulation in the state. The published notice shall include the name of the applicant, the subject matter of the application, and the location or locations at which the applicant proposes to engage in business. A copy of the notice shall be filed with the division.

(b) In order to apprise the public of an opportunity to comment on an application, the notice shall include a statement describing the opportunity to comment on or protest the granting of, or request an informational and comment proceeding on the application. The notice shall include the following statement:

"Any person wishing to comment on the application may file comments in writing with the Commissioner of Financial Institutions (1010 Richards Street, Honolulu, Hawaii 96813) within fifteen days of the date of this notice. The comments may include a statement protesting or supporting the application.

You may at the same time request that an informational and comment proceeding be held on the application. If this proceeding is requested, you should include a brief statement of your interest in the

application, the matters you wish to discuss, and the reasons why a written presentation would not suffice in lieu of the proceeding.

The nonconfidential portion of the application and related documents will be available for inspection within one working day following a request for the application and documents. The application and documents may be inspected at the Division of Financial Institutions during regular business hours." [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33) (Imp: HRS §§403-13, 403-16, 403-23, 403-24, 403-28, 403-30, 403-32, 403-33, 403-37, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-5, 404-6, 404-7, 405-2, 405-4, 405-6, 405-8, 405-9, 405A-2, 406-1.5, 406-14, 407-11, 407-12, 407-14, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-10, 408-11.1, 408-14)

§16-25-25 Comments on application; request for informational and comment proceeding. (a) Any person may file with the commissioner written comments on an application within fifteen days of the publication of notice. The comment period may be extended by the commissioner for good cause.

(b) Any person who files a written comment may at the same time request that an informational and comment proceeding be held on the application. A request for the proceeding shall be accompanied by a brief statement of the person's interest in the application, the matters the person wishes to discuss at the proceeding, and the reasons why a written presentation would not suffice in lieu of the proceeding. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 403-25, 405-34, 406-3, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-14, 403-16, 403-25, 403-32, 403-55, 405-3, 406-3, 407-13, 407-41, 407-61.4, 407-61.5, 408-8, 408-11.1)

§16-25-26 Informational and comment proceeding. (a) The purpose of the informational and comment proceeding shall be to receive information and comments from interested persons on an application.

(b) If the commissioner decides to hold an informational and comment proceeding, the commissioner shall notify the applicant and each person who requested a proceeding of the date, time, and location of the proceeding, not less than ten days prior to the proceeding. The commissioner may also decide not to hold an informational and comment proceeding, in which case the commissioner shall so advise the applicant and each person who requested the proceeding.

(c) The informational and comment proceeding shall involve a meeting with division representatives at which the participants shall be asked to present their views orally. Separate meetings with each of the participants may be conducted where deemed advisable.

(d) There is no proof to be made during an informational and comment proceeding, and no burden of proof is, therefore, placed on the applicant or any person. Witness statements are unsworn, voluntary, and not subject to any restriction, except that they pertain to the application. The proceeding shall not be recorded or transcribed.

(e) The informational and comment proceeding shall be open to the public, except when the commissioner determines that the circumstances warrant confidentiality. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 403-25, 405-34, 406-3, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-14, 403-16, 403-25, 403-32, 403-55, 405-3, 406-3, 407-13, 407-41, 407-61.4, 406-61.5, 408-8, 408-11.1)

§16-25-27 Public review of application; exceptions. (a) Subject to other provisions of this chapter, all applications, correspondence, and supporting documents filed with the commissioner shall be available for public review within one working day following receipt of a request to review them.

(b) Information claimed by an applicant to be confidential shall be submitted on separate pages which can be detached from the rest of the application. The confidential information shall be submitted separately and identified on the top of each page by the words "Submitted as Confidential". Information submitted as being confidential shall be accompanied by a separate statement requesting confidential treatment and providing reasons and authority for maintaining confidentiality. [Eff 8/13/87] (Auth: HRS §§92E-10, 401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§92E-3, 92E-4, 401-14)

§16-25-28 Confidentiality of application. No information contained in any application or supporting documents shall be made available to the public if it is determined by the commissioner to be confidential. Information that may be considered confidential includes, but is not limited to the following:

- (1) Commercial or financial information, the disclosure of which would, or would be likely to, result in substantial competitive harm to the applicant;
- (2) Information, the disclosure of which could seriously affect the financial condition of any financial institution;

- (3) Personal information, the release of which would, or would be likely to, constitute a clearly unwarranted invasion of privacy; or
- (4) Other information, the disclosure of which is prohibited by section 401-14, HRS. [Eff 8/13/87] (Auth: HRS §§92E-10, 401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§92E-3, 92E-4, 401-14)

SUBCHAPTER 4

STANDARDS OF REVIEW; DECISIONS

§16-25-33 Rights of applicants; obligations of commissioner. An applicant has a right to file an application and to obtain full consideration of the application by the commissioner in light of all relevant facts and without prejudice. If all of the relevant criteria are resolved favorably, the applicant is entitled to receive the requested authorization. In the event an application is disapproved, an applicant has a right to be informed by the commissioner of the reasons for disapproval. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-34 Burden of proof. The applicant shall have the burden of providing information to satisfy all relevant criteria in support of an application. The burden of proof in any contested case hearing, including the burden of producing the evidence and the burden of persuasion, shall be upon the applicant. Proof of a matter shall be by a preponderance of the evidence. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-35 Criteria for proposed institutions. The criteria applied to applications relating to proposed institutions includes, but is not limited to:

- (1) General character of management. The quality of an institution's management is vital and perhaps the single most important element in determining the applicant's acceptability as a proposed institution. If the management of the proposed institution does not have an operating record as a functioning unit to assist in forming a judgment, the management review may require an evaluation of the individual officers and directors. Shareholders who subscribe to five per cent or more of the aggregate par value of stock to be issued may also exert an influence in the management of the proposed institution, and an evaluation of those shareholders may also be appropriate in reviewing the general character of management.
 - (A) Among the information to be considered in evaluating each officer and director, and each shareholder subscribing to more than five per cent of the stock to be issued are:
 - (i) Their current and past business experiences, financial capacities, and financial interests;
 - (ii) Their proposed duties and responsibilities as related to their business experience and capabilities;
 - (iii) Their familiarity with the community or trade area; and
 - (iv) Any financing arrangements to purchase stock of the proposed institution.
 - (B) The following information may also be evaluated in reviewing the proposed management:
 - (i) Arrangements such as buy-sell, voting trust or proxy agreements between various individuals or other entities;
 - (ii) Plans for management changes after the commencement of operations; and
 - (iii) Plans for financing the businesses or personal interests of certain officers and directors.
- (2) Adequacy of capital structure. A proposed institution must have:
 - (A) A minimum capital structure of the amount dictated by statute;
 - (B) Sufficient balances in shareholder equity accounts against which initial start-up costs and foreseeable contingencies can be charged; and

- (C) An adequate capital structure as related to its proposed type and volume of business, projected growth, and projected level of earnings. For institutions whose deposits will be federally insured, capital shall be at a level no less than that which is required by the applicable federal law or regulation for newly organized institutions.
- (3) Financial history and condition. The pro forma statement of the proposed institution as of the beginning of business, a schedule and appraisal of all assets with which the proposed institution intends to begin business, and projected financial statements for the first three years of operation shall be considered in analyzing this factor. Some consideration may also be given to the history of other institutions presently and formerly operating in the area of the applicant, if pertinent.
- (4) Future earnings prospects. Detailed estimates of operating income and expenses for the first three years of operation and the assumptions used in determining the projections shall be analyzed. Information shall include the applicant's plans for payment of cash dividends, bonuses, director's fees, retainers fees, and the accounting method to be used. Regarding the accounting systems, the division requires use of the accrual method from the outset of operations.
- (5) Convenience and needs of the community. In determining convenience and needs of the community, a clear definition of the proposed institution's trade area, a description of the principal economic activities in the trade area, and population figures and trends are essential factors to consider. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-36 Criteria for existing institutions. The criteria for proposed institutions and for existing institutions are generally the same. The following criteria shall apply to applications submitted by existing institutions:

- (1) Financial history and condition. The financial history of an operating institution is usually reflected in its present condition. Where the financial history of an operating institution has not been successful, reasonable assurances shall be provided that the cause of any past difficulties of a serious nature have in large measure either been overcome or cease to exist. With respect to an operating institution's financial condition, the general quality of net assets shall be satisfactory and on a par with that of other comparable institutions. In appraising the value and quality of an applicant operating institution's assets, the same appraisal and classification procedures and criteria shall be followed as in regular division examinations. Other information to be considered include: violations of laws and rules, contingent liabilities, existing litigation against the institution, dividend and remuneration policies, policies regarding prompt recognition and charge-off of losses, and other matters which could affect the institution's condition.
- (2) Adequacy of the capital structure. An existing institution should have sufficient capital to support the volume, type, and character of its business, provide for losses, and meet the reasonable needs of the community for financial services.
- (3) Future earnings prospects. The earnings capability of an existing institution is reflected in its earnings record. An operating institution's earnings records shall indicate ability to pay all operating expenses with a safe margin for the absorption of losses and for the payment of reasonable dividends.
- (4) General character of management. In the case of an existing institution, management may be evaluated both from the standpoint of the institution's condition and the vantage point of management's past performance as reflected in the books and records of the institution, and previous examination reports and correspondence.
- (5) Convenience and needs of the community. This criterion is closely related to those outlined with respect to the "future earnings prospect" criterion. An institution which is successfully and profitably operated, and which has a recognized place and established customer relationships in the community is presumed to promote the convenience and advantage of the community. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54,

403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-37 Presumptive disqualification criteria. (a) Managerial resource test. The following factors shall give rise to a rebuttable presumption that the criterion regarding the general character of management has not been met, if the applicant, the individual officers or directors, or any controlling shareholder has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil or administrative action based upon conduct involving an act of fraud or dishonesty;
- (3) Consented to or suffered any indictment, formal investigation, examination, or civil or administrative proceedings that resulted in any agreement, undertaking, consent, or order issued by any federal or state court, any department, agency, or commission of the United States government, any state or municipality, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involves an act of fraud or dishonesty;
- (4) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
- (5) Knowingly made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any written or oral statement which was at the time and in light of the circumstances under which it was made false or misleading with respect to material fact, or has wilfully omitted to state a material fact with respect to information furnished or requested in connection with such an application;
- (6) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of state law or rule;
- (7) Been involved in the denial, withdrawal after receipt of formal or informal notice of an intent to deny, by the applicant or affiliates of the applicant, of:

- (A) Any application relating to the organization of a financial institution;
 - (B) An application to acquire any financial institution, subsidiary or holding company thereof;
 - (C) A notice relating to a change in control of any financial institution, subsidiary or holding company thereof; or
- (8) Been placed in receivership or conservatorship during the preceding ten years, was a management official or director of a financial institution which entered into receivership or conservatorship, was placed in a management consignment program, or was liquidated during his or her tenure or within two years thereafter.
- (b) Financial resource and future prospects test. The following factors shall give rise to a rebuttable presumption that the applicant has not satisfied the financial resources and future prospects criteria:
- (1) Liability for amounts of debt which, in the opinion of the commissioner, create excessive risks of default and pressure on the financial institution;
 - (2) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with the standards of the financial services industry.
- (c) Subsections (a) and (b) shall not be deemed an exclusive list of the grounds upon which the commissioner may find that the relevant criteria have not been met. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-38 Branch or relocation applications. The criteria for institutions apply to applications for branches or relocation of offices. Emphasis shall be placed on the financial history and condition of the applicant institution, rather than upon the financial history and condition of the subject branch or office. An application involving a move of an existing office from the one location to another within the same primary market area is of less significance than a relocation to a different primary market area or the establishment of a new branch. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30,

403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-39 Change in control applications. A review of an application for change in control, shall be based on the following factors:

- (1) Whether the proposed acquisition of control would result in or tend to create a monopoly;
- (2) Whether the proposed acquisition would substantially lessen competition, or be in restraint of trade;
- (3) The financial condition of the acquiring party and its potential impact on the financial stability of the financial institution; and
- (4) The competence, experience or integrity of any acquiring person. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-40 Merger applications. (a) This section shall apply to a proposed merger, consolidation, or purchase of assets and assumption of liabilities.

- (b) In evaluating a merger application, the following factors shall be considered:
 - (1) The effect of the transaction on competition;
 - (2) The convenience and needs of the community to be served;
 - (3) The financial and managerial resources of the merging institutions, including their condition, capital adequacy, quality of management, existence of insider transactions, and nature and extent of any inducement to any officer, director, or employee to promote or encourage the merger; and

- (4) The future prospects, including probable earnings performance. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-41 Action on application; notice of intent to deny application.

(a) Within ninety days following the commissioner's receipt of an application, the commissioner shall determine whether the applicant has met the relevant criteria; provided, however, that if the commissioner has requested additional information from the applicant, the ninety day period shall not commence until all the additional information has been submitted by the applicant. The ninety day period may be extended by the commissioner for a period not exceeding sixty days, upon written notification to the applicant.

(b) If the commissioner is satisfied that the applicant meets the relevant criteria, the commissioner shall issue a written final decision and order approving the application.

(c) If the commissioner is not satisfied that the applicant meets the statutory criteria, the commissioner shall send the applicant a written notice of intent to deny the application, which shall include a statement of the reasons for the intended denial.

(d) If the determination is not made by the commissioner within the time specified, the commissioner shall be deemed to have approved the application. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

§16-25-42 Decision approving application; decision denying application subject to contested case hearing; final decision and order. (a) Within fifteen days

following receipt of a notice of intent to deny the application, the applicant may submit information to address or rebut the notice.

(b) If no information is submitted in response to the notice of intent to deny the application, the commissioner, as expeditiously as possible, shall issue a written decision denying the application subject to a contested case hearing and issuance of a final decision and order.

(c) Upon receipt of a response to the notice of intent to deny the application, the commissioner, as expeditiously as possible, shall issue a written decision, either approving the application or denying the application subject to a contested case hearing and issuance of a final decision and order.

(d) Within fifteen days following receipt of a decision denying the application, the applicant may petition the commissioner for a contested case hearing. The contested case hearing shall be held in accordance with chapter 91, HRS, and chapter 16-201.

(e) If a petition for a contested case hearing is not filed within the time specified, the commissioner's decision denying the application shall become a final decision and order denying the application.

(f) Upon the filing of a petition for a contested case hearing, and as expeditiously as possible, the commissioner shall assign the petition to a hearings officer for further proceedings pursuant to sections 16-201-26 through 16-201-47. The commissioner shall issue a written final decision and order as expeditiously as possible, following the hearings officer's transmittal of the entire record together with the recommended decision, any timely filed exceptions, and any timely filed statements in support of the recommended decision.

(g) Any written final decision and order of the commissioner adverse to the applicant shall be reviewable upon appeal to the circuit court of the first circuit, as provided in chapter 91, HRS; provided that any written final decision and order adverse to a credit union applicant shall be reviewable upon appeal to the credit union review board, as provided in section 410-5, HRS. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 403-14, 405-34, 406-6, 407-97, 408-33, 410-38) (Imp: HRS §§403-13, 403-14, 403-16, 403-23, 403-25, 403-28, 403-29, 403-30, 403-32, 403-33, 403-37, 403-38.8, 403-41, 403-44, 403-45, 403-47.1, 403-53, 403-54, 403-55, 403-56, 404-2, 404-3, 404-4, 404-5, 404-6, 404-7, 404-8, 404-9, 405-2, 405-5, 405A-2, 406-1.5, 406-2, 406-3, 406-14, 407-13, 407-15, 407-35, 407-41, 407-42, 407-47, 407-48, 407-55, 407-61.4, 407-61.5, 407-95, 407-103, 407-104, 408-8, 408-11.1, 408-14, 410-5, 410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39, SLH 1987, Act 6)

SUBCHAPTER 5

EXCEPTIONS

§16-25-48 Branch relocation within short distance. For financial institutions with a UFIRS rating of "1" or "2", a relocation of a branch within a radius of one mile from the existing branch shall be deemed automatically approved by the commissioner and shall not require application to the commissioner; provided the relocated branch is open for business within thirty days of the closing of the existing branch. The commissioner shall be notified of the relocation at least ten days prior to the relocation. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 407-97, 408-33) (Imp: HRS §§403-53, 403-54, 403-55, 407-41, 407-42, 408-14)

§16-25-49 Temporary branch relocation or closing. A financial institution with a UFIRS rating of "1" or "2" may temporarily relocate a branch within a radius of one mile from the existing branch, provided it reopens its branch at the same location within one year of closing the existing branch and closes the temporary branch within thirty days after reopening. The temporary relocation shall be deemed automatically approved by the commissioner and shall not require application to the commissioner. The commissioner shall be notified of the temporary relocation at least ten days prior to the temporary relocation. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 407-97, 408-33) (Imp: HRS §§403-53, 403-54, 403-55, 407-41, 407-42, 408-14)

§16-25-50 Closing of branch or office. The closing of a branch or office by a financial institution other than a foreign bank representative office or agency shall not require the approval of the commissioner. Where the commissioner's approval is not required, the commissioner shall be notified of the closing at least ten days prior to the closing. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7, 407-97, 408-33, SLH 1987, Act 168) (Imp: HRS §§403-53, 403-54, 403-55, 407-41, 407-42, 408-14, SLH 1987, Act 168)

§16-25-51 Application for new bank. Regarding an application for a new bank, the procedures set forth in section 403-24, HRS, supersede the procedures set forth in section 16-25-24. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7) (Imp: HRS §403-24)

§16-25-52 Change in control of bank or bank holding company. Subchapters 3 and 4 shall not apply to a notice of change in control of a bank or bank holding company. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7) (Imp: HRS §403-38.8)

§16-25-53 Bank merger. Regarding an application for a merger involving a bank, the procedures set forth in section 404-4, HRS, supersede the procedures set forth in subchapters 3 and 4. Within thirty days after receipt of an application, the commissioner shall approve or disapprove the merger. If no action is taken, the agreement shall be deemed approved. [Eff 8/13/87] (Auth: HRS §§401-18, 403-7) (Imp: HRS §404-4)

§16-25-54 Change in control of savings and loan association or holding company. (a) For purposes of this section, "control" shall be defined, pursuant to section 407-61.3, HRS.

(b) Regarding the proposed acquisition of control of a savings and loan association or holding company, the commissioner shall promptly forward a copy of the application to the affected association or holding company. Upon receipt of the application, the association or holding company has ten days within which to submit relevant information to the commissioner regarding the proposed acquisition of control.

(c) Upon receipt of the application, the commissioner has fifteen days within which to request additional information from the proposed acquirer. The proposed acquirer shall submit this information within the time period specified by the commissioner.

(d) If the commissioner intends to disapprove the proposed acquisition of control, the commissioner shall send the proposed acquirer a written notice of intent to deny the application. The notice shall be sent within sixty days following the commissioner's receipt of the application (or thirty days, in the event the proposed acquisition will be accomplished by a tender offer); provided that if the commissioner has requested additional information from the proposed acquirer, the sixty-day period (or thirty-day period, in the case of a tender offer) shall not begin until the additional information has been submitted. If the notice of intent to disapprove is not issued within the time specified, the application shall be deemed approved.

(e) Within ten days after receipt of the commissioner's notice of intent to disapprove, the applicant may request an administrative hearing to be held in accordance with chapter 91, HRS. If no request is made, the commissioner may issue a final decision disapproving the proposed acquisition of control. [Eff

8/13/87] (Auth: HRS §401-18, 407-97) (Imp: HRS §§407-61.3, 407-61.4, 407-61.5)

§16-25-55 Transfer of industrial loan license; acquisition of control; transfer of stock. (a) A transfer or assignment of an industrial loan license shall involve the bona fide sale of all or substantially all of the business operations of an industrial loan company, and is subject to the prior approval of the commissioner. A transfer or assignment of an industrial loan license may also include the acquisition of control of an industrial loan company.

(b) For purposes of this section, "acquisition of control" means acquisition by a person or persons acting in concert of:

- (1) The power to vote twenty-five per cent or more of any class of voting securities of an industrial loan company; or
- (2) Ownership, control, or the power to vote ten per cent or more of a class of voting securities of an industrial loan company, if:
 - (A) The company has issued any class of securities subject to registration under section 12 of the Securities Exchange Act of 1934 (15 United States Code 78); or
 - (B) Immediately after the transaction no other person will own a greater proportion of that class of voting securities.

(c) A purchase, assignment, transfer, pledge, or other disposition of less than twenty-five per cent of any class of outstanding stock of an industrial loan company shall be deemed automatically approved by the commissioner; provided the person to whom the stock is transferred owns, directly or indirectly, less than twenty-five per cent of any class of outstanding stock of the industrial loan company after the transfer, and written notice of the transfer is given to the commissioner at least five days before the transfer. The automatic approval does not apply to a purchase, assignment, transfer, pledge, or other disposition of less than twenty-five per cent of any class of stock, if the person individually or acting in concert with others may exercise control over the industrial loan company, directly or indirectly, by being able to direct the management or policies of the industrial loan company. [Eff 8/13/87] (Auth: HRS §408-33) (Imp: HRS §408-11.1)

§16-25-56 Application relating to credit union. Sections 16-25-23 through 16-25-26 shall not apply to credit unions. [Eff 8/13/87] (Auth: HRS §410-38) (Imp: HRS §§410-7, 410-8, 410-10.5, 410-11, 410-32, 410-33, 410-37.5, 410-39)

SUBCHAPTER 6

REQUESTS FOR OPINIONS AND INTERPRETATIONS OF STATUTE OR RULE

§16-25-61 Inquiries from the public. Any opinion, interpretation, or advice rendered by the division shall be in keeping with the division's regulatory purpose. The division shall not render opinions or interpretations to private individuals, as to determine an individual's rights against an institution. The division may only investigate and act upon complaints against state-chartered financial institutions. All complaints shall be made in writing and submitted to the regulated industries complaints office, department of commerce and consumer affairs. [Eff 8/13/87] (Auth: HRS §§91-7, 91-8, 401-18) (Imp: HRS §§401-18, 403-7, 403-25, 406-6, 407-97, 408-33, 410-38)

§16-25-62 Inquiries from financial institution or industry trade association. The division's response to an inquiry from an institution or industry trade association shall not determine private rights and obligations. The commissioner may decide to respond to an institution's or industry trade association's inquiry regarding an interpretation of a statute or rule that is consistent with the division's regulatory purpose. An institution or industry trade association has a right to know whether the division will find a particular action to be within the bounds of the law. [Eff 8/13/87] (Auth: HRS §§91-7, 91-8, 401-18) (Imp: HRS §§401-18, 403-7, 403-25, 406-6, 407-97, 408-33, 410-38)

§16-25-63 Requests for interpretation or opinion. (a) An inquirer who requests an interpretation of statute or rule shall state in writing:

- (1) The facts giving rise to the questions;
- (2) The specific questions being presented;
- (3) The inquirer's position on the questions; and
- (4) Any authority, legal or otherwise, for that position.

(b) If a request is made through counsel, counsel's client institution shall be identified. [Eff 8/13/87] (Auth: HRS §§91-7, 91-8, 401-18) (Imp: HRS §§401-18, 403-7, 403-25, 406-6, 407-97, 408-33, 410-38)

§16-25-64 Interpretations and opinions by commissioner. (a) The commissioner shall issue in writing any statement that appears to interpret a statute or rule, render an opinion, or define a policy.

(b) The commissioner's interpretation or opinion shall have particular applicability to the inquirer, and shall not be intended to apply to other institutions

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or persons, unless so stated. [Eff 8/13/87] (Auth: HRS §§91-7, 91-8, 401-18) (Imp: HRS §§401-18, 403-7, 403-25, 406-6, 407-97, 408-33, 410-38)

§16-25-65 Construction. Whenever this chapter is silent on a matter, the commissioner may refer to chapter 16-201 for guidance. [Eff 8/13/87] (Auth: HRS §§401-18, 91-2) (Imp: HRS §§401-18, 91-2)

SUBCHAPTER 7

CONSUMER COMPLAINTS

§16-25-69 Consumer complaints. Consumer complaints against state-chartered financial institutions shall be filed in writing with the regulated industries complaints office. The division of financial institutions shall provide technical assistance to the regulated industries complaints office as it investigates and acts upon complaints. [Eff 8/13/87] (Auth: HRS §§91-7, 91-8, 401-18) (Imp: HRS §§401-18, 403-7, 403-25, 406-6, 407-97, 408-33, 410-38)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chapter 16-25, Hawaii Administrative Rules, on the Summary Page dated July 17, 1987, was adopted on July 17, 1987, and Chapters 16-32 and 16-33, Hawaii Administrative Rules, were repealed on July 17, 1987, following a public hearing held on July 15, 1987, after public notice was given in The Honolulu Advertiser and the Honolulu Star-Bulletin on June 24, 1987.

The adoption of chapter 16-25 and the repeal of chapters 16-32 and 16-33 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Donna Tanoue

DONNA TANOUE

Commissioner of Financial Institutions

APPROVED AS TO FORM: Date 7/24/87

/s/ Winfred K. T. Pong

Deputy Attorney General

APPROVED: Date 7/24/87

/s/ Robert A. Alm

ROBERT A. ALM

Director of Commerce and Consumer Affairs

APPROVED: Date 8/3/87

/s/ John Waihee

JOHN WAIHEE, Governor

State of Hawaii

August 3, 1987

Filed

DIVISION OF FINANCIAL INSTITUTIONS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

Chapter 16-25, Hawaii Administrative Rules, which was adopted on July 17, 1987 and became effective on August 13, 1987, was the subject of another opportunity to provide public comment. A public hearing was held on September 12, 1989 at 8:00 a.m. in the Kuhina Nui Room, Kamamalu Building, Department of Commerce and Consumer Affairs. Public notice of the hearing was published on August 2, 1989 in The Honolulu Advertiser, Honolulu Star-Bulletin, West Hawaii Today, The Maui News, The Hawaii Tribune-Herald, and the Garden Island.

After review of the comments submitted, the Commissioner of Financial Institutions determined that the rules should remain as originally adopted.

/s/ Clifford K. Higa
Clifford K. Higa, Commissioner
Division of Financial Institutions
Department of Commerce and Consumer Affairs

September 18, 1989
Date

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-25 and Repeal of
Chapters 16-32 and 16-33, Hawaii Administrative Rules

July 17, 1987

SUMMARY

1. Chapter 16-25, Hawaii Administrative Rules, entitled "Application Procedures Relating to Financial Institutions", is adopted.
2. Chapters 16-32 and 16-33 are repealed.